

EXECUTIVE OFFICE OF ENERGY and ENVIRONMENTAL AFFAIRS
DIVISION OF CONSERVATION SERVICES
100 Cambridge St., 9th fl.
Boston, MA 02114-2150
(617) 626-1011

For agency use only
DATE: _____
MUNICIPALITY (list all): _____
NUMERIC ASSIGNMENT(S): ____/____

CONSERVATION RESTRICTION APPLICATION FORM

Pursuant to the provisions of M.G.L. ch. 184. §32. The Executive Secretary of Energy and Environmental Affairs is hereby requested to approve a perpetual conservation restriction as described below:

A. GENERAL INFORMATION (please indicate contact person for CR review)

1. GRANTOR(S) (must list all owners)

(Name(s))

(Address)

(Telephone & fax No.) (Contact Person)

2. GRANTEE(S): _____
(Name(s))

(Address)

(Telephone & fax No.) (Contact Person)

3. ARE THERE ONE OR MORE MORTGAGES ON THE PROPERTY? ☐ Yes ☐ No
(Assent of mortgagee(s) is required and must be recorded with the restriction.)

4. IS THE RESTRICTION IN MORE THAN ONE MUNICIPALITY? ☐ Yes ☐ No

5. TYPE OF RESTRICTION: a. Conservation Only: ☐
b. Joint Restriction: ☐
Type: _____
(agricultural, historical, watershed)

6. STATE OR FEDERAL FUNDS INVOLVED ☐ Yes ☐ No
☐ CPA (attach attested copy of town meeting vote(s) as an exhibit)
☐ Grant (type) (attach as an exhibit)
☐ Other (attach)
☐ Is there a deadline for completing restriction (reason)? _____ 20____

NOTE: (A full package must be submitted for CR review, even if all or some of the materials were submitted as part of the grant process, as the grant programs are separate)

7. PUBLIC OFFICIALS: State Representative(s) _____,
State Senator(s) _____, Other involved Official(s) _____

NOTES:

If the grantee is a non-profit charitable corporation or trust, DCS may require proof that it is a qualified charitable organization in accordance with M.G.L. c.180 §4(a) or (l) and the I.R.S. Code Section 501(c) (3) that qualifies as a M.G.L. c.184 §32 holder, and reserves the right to review the organization's by-laws and list of officers.

Regardless of whether the grantee is a qualified private non-profit organization or a city or town or commission, authority, or other instrumentality thereof, the local conservation commission must define the reasons for preserving the property and certify that the restriction is in the public interest (please refer to page 6).

A conservation restriction is a voluntary limitation on the use of land designed to preserve it from adverse future change. But it should be distinguished at the outset from an agricultural preservation restriction which is approved by the Commissioner of Food and Agriculture for the Commonwealth, 251 Causeway Street, Boston, MA 02114-2150, and from an historical preservation restriction, which is approved by the Massachusetts Historical Commission 80 Boylston Street, Rm. 310, Boston, MA 02116, and from a state watershed preservation restriction which is approved by the Commissioner of the Department of Conservation and Recreation, 251 Causeway St., Boston, MA 02114-2150.

It is possible for a restriction to fit into more than one category, requiring more than one approval. If this is a joint restriction, has the approval process been started with the joint holder, including the Commissioners of Food and Agriculture, DCR, the Massachusetts Historical Commission, etc.? ☐Yes ☐No

8. GRANTOR'S INTENT

a. Charitable contribution: ☐Yes ☐No
Do you intend to claim an IRS income tax deduction? ☐Yes ☐No

- b. Granted or required as part of municipal or state permitting process? ☐Yes ☐No
1. Is this restriction required by a M.G.L. C.40A §9 special permit? ☐Yes ☐No
(Please attach a copy of the permit(s) as an exhibit)
 2. Required by M.G.L. C.131, §40 Wetlands Order of Conditions? ☐Yes ☐No
(Please attach a copy of the Order of Conditions)
 3. Other? ☐Yes ☐No (please explain)
- _____
- _____

c.. Other: Please explain (for example, sale of a C.R. to a public agency):

d. Is this a perpetual restriction? ☐Yes ☐No If less than permanent, for how many years: ____
(It is the policy of DCS not to approve less than permanent restrictions except in exceptional circumstances. Please discuss the restriction with DCS before submitting a non-permanent CR)

B. PUBLIC BENEFIT

1. Is the restriction for the preservation of land areas for outdoor recreation by, or the education of, the general public (will there be public access)? ☐Yes ☐No
2. Is the restriction for the protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystems? ☐Yes ☐No
3. Is the restriction for the preservation of open space (including farmland and forest land) where such preservation is:
 - a. pursuant to a clearly delineated federal, state, local governmental policy, and will yield a significant public benefit? ☐Yes ☐No
 - b. for the scenic enjoyment of the general public and will yield a significant public benefit? ☐Yes ☐No
4. Is the property historically significant or meets National Register Criteria or is within a registered historic district or contributes to the integrity of an historic building or property? ☐Yes ☐No

5. Other public benefit? ☐ Yes ☐ No (if yes, please explain)

NOTES:

The Secretary will find sufficient evidence of the "public interest," if the applicant can show that the restriction meets any of the tests for deductibility under the Internal Revenue Service Code Section 170(h) and the Regulations promulgated thereunder, or a private letter ruling by the Internal Revenue Service shall be deemed sufficient for establishing such deductibility, or the applicant makes an independent showing of eligibility for deductibility. The letter ruling or documentation demonstrating eligibility for deductibility should be attached along with this application

Regardless of the intent of the grantor's gift, the Secretary's determination of public interest will be dependent upon how well the applicant demonstrates public interest; however, grantors should be advised that the Secretary reserves the right to require modifications to the conservation restriction where in his/her opinion the retained rights adversely impact the public interest or natural resource values of the property or when the document is improperly drafted.

C. SITE DATA

1. Location:
1. Municipality _____ Street Location _____
 2. Grantor's Registry of Deeds Bk. # _____ Page # _____
 3. Assessors Map # _____ Lot # _____
 4. New Site?: _____ Addition to existing restricted area: _____ (please specify)

2. Zoning: Commercial ☐ Industrial ☐ Residential ☐ (check all that apply)

3. Title: Does applicant have clear title? ☐ Yes ☐ No
If no, please explain:

4. Encumbrances: Is the property encumbered by any easement(s)? ☐ Yes ☐ No
Is the property encumbered by any mortgages(s)? ☐ Yes ☐ No
Please explain and attach copy of easement, mortgage, subordination, etc.:

5. Geographic Information (if restriction is located in 2 municipalities, fill out separate page for each):

1. Total acres: _____ Acres covered by restriction: _____ Total unrestricted areas _____

2. Cover: acres in A. Upland Forest _____ B. Open (field, pasture, etc.) _____
C. Vegetated Wetland _____ D. Water _____ E. Other _____

3. Topography: acres in A. Flat _____ B. Hilly _____
C. Rolling _____ D. Mountains _____

4. Water front: feet on A. Ocean _____ B. River _____
C. Stream _____ D. Lake _____

Please identify water body _____

6. General information:

Are there any improvements existing on the property, or to be permitted after execution of the C.R.? ☐Yes ☐No If yes, please describe in detail:

7. Is the property currently under any of the preferential real estate tax assessment programs?

☐Yes ☐No If yes, which one: c.61 ☐ c.61A ☐ c. 61B ☐

NOTE:

If the restriction lies in more than one community, separate Site Data forms, Selectmen and Conservation Commission approvals must be completed for that portion of the restriction within each community

8. If the property is under agricultural use, is the soil considered prime or of statewide agricultural significance?

☐Yes ☐No (If yes, USDA Soil Conservation Service data must be provided)

9. Is the property adjacent to any public or quasi-public land or buildings? ☐Yes ☐No

Describe briefly:

10. Does the property lie within an historic district, include an archaeological or rare species site, fall within a Department of Conservation and Recreation designated scenic landscape, river, or within an Executive Office of Energy and Environmental Affairs designated Area of Critical Environmental Concern, a Zone II of a public water supply etc.? Please explain:

11. Will public access be allowed? ☐Yes ☐No If yes, explain any limitations, type, etc.:

Prepared by: _____

Address: _____

_____ (telephone number, fax number if comments are to be sent to preparer)

ATTACHMENTS:

- | | | | |
|----|---|------------------------------|-----------------------------|
| a. | Draft Conservation Restriction (required) | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| b. | USGS Topographic map with conservation restriction outlined and identified thereon (required) | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| c. | Survey, plot map, or sketch plan (required) | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| d. | Natural resource inventory, (if available) | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| e. | Wetlands Order of Conditions C.131.§40, (if applicable) | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| f. | Zoning, C. 40A, §9 Special Permit, etc. (if applicable) | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| g. | I.R.S. letter ruling, (if applicable & not previously provided) | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| h. | Charitable status documentation,(if applicable & not previously provided) | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| i. | Assent of mortgagee(s) (if applicable) | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| j. | USDA Soil Data, (if applicable) | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| k. | Other (please specify) (court orders, settlement agreements, votes, grant agreement, contracts, etc.) | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

NOTES:

The applicant is highly advised to follow the Model Conservation Restriction and submit a draft of the conservation restriction for a determination as to whether it is acceptable for approval by the Secretary. All required attachments must be submitted for review.

The final conservation restriction must be prepared in a form suitable for recording and be approved and signed by the grantor, grantee, and municipal official(s), have all final Exhibits attached, and a subordination, if applicable, to be recorded prior to the conservation restriction.

Please check your local Registry of Deeds for their requirements, particularly as to first page spacing.

MUNICIPAL CERTIFICATION

(We) the undersigned Conservation Commission of _____ (the certifier/holder) hereby certify that the proposed conservation restriction is in the public interest in that it (describe public benefit):

Date: _____

Signed:

NOTES:

This certification by the conservation commission may be submitted separately from the application and filed with the submission of the executed conservation restriction, it being recognized that the applicant may want to submit the application with a draft copy of the conservation restriction for review prior to actual submission of the executed document.

Conservation restriction lands which overlap municipal boundaries must be approved and certified by the appropriate officials of both municipalities.

The commissioners' certification should state why the property is significant and why the conservation restriction is important.

APPENDIX C

EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS
DIVISION OF CONSERVATION SERVICES
100 Cambridge Street, 9th Floor
Boston, MA 02114
(617) 626-1011

DATE: _____

MUNICIPALITY: _____

NUMERIC ASSIGNMENT: _____

CONSERVATION RESTRICTION FIELD INSPECTION

1. MUNICIPALITY: _____ LOCATION (street,road,etc): _____

2. GRANTOR: _____ GRANTEE: _____

3. NEW SITE: _____ ADDITION TO SITE: _____ TOTAL ACRES: _____ TERM: _____

4. ARE BUILDINGS INCLUDED? ☐ YES ☐ NO

If yes, estimate value, condition, and existing or proposed use. (include photographs and negatives)

5. PRESENT AND PAST USE OF SUBJECT PROPERTY AND ADJACENT LANDS:
(please include USGS topographical maps showing subject and adjacent public lands, if any)

6. BRIEF DESCRIPTION OF PROPERTY INCLUDING NATURAL RESOURCES AND ANY UNIQUE FEATURES:

a. Are prohibited activities sufficient to protect the resource values? ☐ Yes ☐ No

b. Are retained uses compatible with the preservation or protection of the natural resources?
☐ Yes ☐ No (if answers to 6a or 6b are no, please explain in 8 below)

7. ARE PUBLIC ACTIVITIES PERMITTED? ☐ Yes ☐ No

If yes, please explain NATURE and SCOPE: _____

8. COMMENTS AND

RECOMMENDATIONS: _____

INSPECTOR _____

DATE: _____

ACCOMPANIED BY: _____

APPENDIX D

PLANS, POLICIES, PROGRAMS, AND LANDS HELPFUL IN DEMONSTRATING STATE AND LOCAL PUBLIC BENEFIT

1. Municipal Open Space and Recreation Plans
2. Regional Open Space Plans (Regional Planning Authorities)
3. Statewide Comprehensive Outdoor Recreation Plan
 - * State Trail System
 - * Scenic Rivers Program
 - * Unique Geological Inventory
 - * Bay Circuit Program
4. Massachusetts Natural Heritage Inventory of Rare and Endangered Botanical and Zoological Species Habitat and National Endangered Species Act
5. Areas of Critical Environmental Concern - designated areas
6. Coastal Zone Management Plan - Significant Resource Areas
 - * Barrier Beaches
 - * Primary Dunes
 - * Sandy Beaches
 - * Saltwater Marshes
 - * Shellfish Beds
 - * Salt Ponds
 - * Estuaries
 - * Coastal Embayments
 - * Anadromous Fish Runs
 - * Erosion Areas
 - * Designated Ports
 - * Accretion Areas
 - * View Points
 - * Historic Sites (also on Massachusetts Historical Commission inventory)
 - * Recreational Beaches
 - * Boat Ramps, Marinas
7. Massachusetts Historical Commission
 - * Massachusetts Historical Sites
 - * National Historic Register Sites (P.L. 89-665), eligible for inclusion
 - * Known Cultural and Archeological Sites
8. Scenic roads, Chapter 40, §15C
9. Scenic Mountains, Chapter 131, §39A
10. Historic Districts
11. Flood Disaster Protection Act of 1973, land within flood lines. See also P.L. 566 Small Watershed Projects.
12. USDA Soil Conservation Service (SCS) - various inventories of potential reservoir sites
13. Massachusetts Water Resources Commission - inventory of regionally important wetlands, (identified in Massachusetts Water Supply Statement May 2, 1978, 353 pp.)
14. National Natural Landmarks (i.e. Gay Head Cliffs, Lynnfield Marsh)
15. Town well-fields (existing and proven reserves and reservoirs)
16. Agricultural land - SCS identified prime, Massachusetts unique
17. Wetlands Restrictions Program

- * Chapter 131, §40
- * Chapter 130, §105
- * Restricted areas and areas to be restricted

18. Executive Orders
 - * #181 Barrier Beaches
 - * #193 Agricultural lands
19. Department of Environmental Protection Great Pond Inventory
20. Department of Environmental Management Scenic Landscape Inventory, 1982
21. Department of Environmental Protection Water Quality Plans or Programs, various
22. Buffers to water bodies, other protected lands, ACECs, critical habitat, parks, etc.
23. Greenways, trails, and wildlife corridor connections
24. Public access for passive recreation

APPENDIX E

Recommendations to Increase the Reliability of Grantees as Conservation Restriction Managers¹

1. Conservation Restriction programs should have written criteria for what constitutes a satisfactory restriction.
2. Background data assembled should be adequate to support proper monitoring and legal enforcement action.
3. Organizations and agencies holding conservation restrictions should make every reasonable effort to ensure that they will have a reliable source of funds for monitoring and enforcement actions, including court cases.
4. Properties protected by conservation restrictions should be checked at least annually.
5. Careful records should be kept of inspections and of all contacts with landowners.
6. Monitoring programs should be designed and managed so that violations will be detected early before elimination of the violation becomes a practical impossibility.
7. Organizations and agencies holding conservation restrictions should keep track of changes in ownership of restriction - protected properties.
8. Organizations and agencies holding conservation restrictions should frequently remind landowners about the terms of conservation restrictions, especially after a property changes hands.
9. Organizations and agencies holding conservation restrictions should establish careful procedures for reviewing possible amendments to ensure that any permitted amendment does not impair the conservation values of the restriction.
10. In the case of donated conservation restrictions for which tax deductions have been taken, donees should seek competent appraisal advise to satisfy themselves that a permitted amendment will not add value to the property.
11. Organizations and agencies holding restrictions should maintain careful written records of all discussions and correspondence relating to an amendment in case of questions later.
12. Termination should be viewed as an absolute last resort and only done after exhaustive consideration has demonstrated overriding public need for the termination.
13. In any situation where the primary grantee's long term commitment and/or financial resources for monitoring and enforcement are open to reasonable question, the landowner and primary grantee should make every reasonable effort to find a suitable back-up grantee.

¹ Land Trust Ex

**Executive Office of Energy and Environmental Affairs / Division of Conservation Services
GIS Data Entry Form**

Local Acquisitions for Natural Diversity (LAND) (formerly Selp-Help), Parkland Acquisitions and Renovations for Communities (PARC) (formerly Urban Self-Help), SURF, Land & Water Conservation Fund Projects and Conservation Restrictions

1. Contact Person: _____

(telephone) _____

2. Project Type (select one):

- ☐ LAND
☐ PARC
☐ SURF
☐ Land & Water Conservation Fund
☐ Other _____

3. Municipality(ies): _____

Project Number _____

4. a. Fee Owner: _____
(Holder of the Deed)

b. Manager (if different from Owner): _____

5. *Conservation Restriction held by: _____

**Complete only if land is encumbered by a Chapter 184 section 31-33 Conservation Restriction.*

Check the box corresponding to how the restriction was obtained:

☐ Gifted ☐ Purchased ☐ Exacted by Regulation or given as part of permit process

Number of reserved lots within the restriction, if any: _____

6. Assessor's Information _____ (map) _____ (Block) _____ (lot)

7. Registry Information _____ (name)
_____ (book) _____ (page) _____ (plan) _____ (page)

8. Acreage: _____

9. Primary Use: (select one)

- ☐ Conservation
☐ Recreation
☐ Both Conservation and Recreation
☐ Water Supply Protection
☐ Agriculture
☐ Historic/Cultural
☐ Other (please explain) _____

Public Access:

- ☐ Public
☐ Public, limited (explain) _____
☐ Public, seasonal
☐ None
☐ Other (please explain) _____

The applicant must provide to the Executive Office of Energy & Environmental Affairs materials that will allow MassGIS to accurately represent the site in the state's open space data layer. These materials include:

1. A USGS topological map or copy (including the name & date of the quad) with the site accurately drawn on it.
2. A copy of the site plan and/or a survey plan if available (required for exacted conservation restrictions).
3. A printout of the digital representation of the site on a USGS topological map background and a note indicating that the digital representation of the site has been emailed to Dominique.pahlavan@state.ma.us in appropriate format (Massachusetts State Plane Meters NAD1983 Datum) with a subject line of: <town> <Project Type> <Project#> (e.g. Boston CR #12).

MassGIS will attempt to add the site to the open space data layer using these materials but may request additional material from the grantee if the materials provided are not at an appropriate scale or are not sufficiently clear to support conversion to digital data that conform to MassGIS data standards. Topographical maps can be purchased at book stores or printed from <http://www.mass.gov/mgis/mapping.htm>. Please call Dominique Pahlavan at MassGIS, 617.626.1184, with any questions or for assistance with this form.